



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2022-0169; FRL-9610-02-R2]

Approval and Promulgation of Implementation Plans; New York; Gasoline Dispensing, Stage I, Stage II and Transport Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of New York for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to gasoline dispensing sites and transport vehicles. This revision includes regulatory amendments that eliminate Stage II requirements and strengthen requirements for Stage I vapor recovery systems at gasoline dispensing facilities, and that require that transport vehicles meet current Federal United States Department of Transportation (DOT) requirements. The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain national ambient air quality standards for ozone and will reduce volatile organic compounds throughout the State. This action is being taken pursuant to the Clean Air Act. The EPA proposed to approve this rule on November 1, 2022, and received no comments.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2022-0169. All documents in the docket are listed on the

<https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *<https://www.regulations.gov>*.

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3382, or by email at banon.ysabel@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 1, 2022 (87 FR 65714), the EPA published a notice of proposed rulemaking (NPR) that proposed to approve a SIP revision submitted by the State of New York on March 3, 2021. The submitted SIP revision consists of amendments to Title 6 of NYCRR, part 230, “Gasoline Dispensing Sites and Transport Vehicles.” These revisions to 6 NYCRR part 230 eliminate Stage II vapor recovery system requirements and require the decommissioning of existing Stage II vapor recovery systems; strengthen Stage I vapor recovery requirements; and require that transport vehicles meet current Federal United States DOT requirements. On September 17, 2021, the New York State Department of Environmental Conservation (NYSDEC) submitted a supplemental

analysis, “New York State Stage II Removal Analysis 2020,” to demonstrate its justification of Stage II removal.

Stage I Vapor Recovery Systems

Stage I vapor recovery systems are systems that capture hydrocarbon vapors, such as volatile organic compounds (VOCs), displaced from storage tanks at gasoline dispensing facilities (GDFs) during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the transport vehicle’s (delivery truck’s) tank. Some vapors are vented to the atmosphere when the storage tank exceeds a specified pressure threshold, however, the Stage I vapor recovery systems greatly reduce the displaced vapors being released into the atmosphere. Stage I vapor recovery systems have been in place since the 1970s, and the EPA guidance regarding use of Stage I systems to control VOC emissions from this source category (gasoline service stations) has been in place since 1975.¹

Stage II Vapor Recovery Systems and Onboard Refueling Vapor Recovery Systems

Stage II vapor recovery systems and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at gasoline dispensing facilities and capture the refueling fuel vapors at the gasoline pump. The Stage

¹ See U.S. EPA, “Design Criteria for Stage I Vapor Control Systems--Gasoline Service Stations” (Nov. 1975, EPA Online Publication EPA-450/R-75-102), *available at* <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt>; U.S. EPA, “Control Techniques Guidelines for the Oil and Natural Gas Industry” (Nov. 2016 EPA Online Publication EPA-453/B-16-001), *available at* <https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf> (providing control techniques guidelines for control of VOC emissions from the gasoline service station source category); and U.S. EPA, “Control of Volatile Organic Compound Leaks from Gasoline Tank Trunks and Vapor Collection System” (Dec. 1978 EPA Online Publication EPA-450/2-78-051), *available at* <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000M9RD.txt> (providing guidelines related to the control of VOC leaks from and test procedures for gasoline tank trunks and vapor collection systems at terminals, bulk plants and service stations).

II system carries the captured vapors back to an underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation. Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever-declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.²

A detailed discussion of New York's SIP revision and EPA's rationale for approval of the SIP revision were provided in the notice of proposed rulemaking and will not be restated in this final rule. For this detailed information, the reader is referred to the EPA's November 1, 2022, proposed rulemaking (87 FR 65714).

Attendant revisions to 6 NYCRR section 200, "General Provisions," section 200.9, Table 1, "Referenced material", related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

II. Comments Received in Response to the EPA's Proposed Action

The EPA provided a 30-day review and comment period for the November 1, 2022, proposed rule. The comment period ended on December 2, 2022. We received no comments on the EPA's proposed action.

III. Final Action

The EPA is approving New York's March 3, 2021, SIP revision that incorporates revisions to Title 6 NYCRR, part 230, "Gasoline Dispensing Sites and Transport Vehicles," with a State effective date of February 12, 2021. The EPA is approving this

² In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems actually result in lower overall control system efficiency than what could have been achieved individually by either ORVR or the Stage II vapor recovery system.

SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standards. Attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced material,” related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revised 6 NYCRR part 230, “Gasoline Dispensing Sites and Transport Vehicles,” regulation described in 40 CFR part 52 as discussed in section I. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.³

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal

³ 62 FR 27968 (May 22, 1997).

regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. In §52.1670, in the table in paragraph (c), revise the entry for “Title 6, Part 230” to read as follows:

§52.1670 Identification of plan.

* * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *				
Title 6, Part 230	Gasoline Dispensing Sites and Transport Vehicles	2/12/2021	[insert date of publication in the Federal Register]	EPA approval finalized at [insert Federal Register citation].
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